

CITY OF LEWISTON

CITY COUNCIL

JANUARY 9, 2007

REGULAR MEETING HELD IN THE COUNCIL ROOM AT 7:00 P.M.

CITY COUNCIL PRESIDENT RENEE M. BERNIER, PRESIDING.

PRESENT: Councilors Mendros, O'Brien, Jean, Samson, Rousseau, Deputy City Administrator Phil Nadeau, and City Clerk Kathleen Montejo. Excused/Absent: Councilor Paradis

Pledge of Allegiance to the Flag.

Moment of Silence.

UPDATE FROM THE LEWISTON YOUTH ADVISORY COUNCIL

Allison Beaucage of the LYAC informed the Council that they are working on awareness issues involving underaged drinking and they are working with the school health educators about effective ways to raise awareness. They are seeking a business sponsor for this program. She reported the group recently received a \$4500 school technology grant to help fund the electronic message board at the high school entrance and they will be able to access matching funds from DAB as a result of this recent donation.

VOTE (1-2007)

Motion by Councilor O'Brien, seconded by Councilor Mendros:

To dispense with the reading of the minutes of the December 19, 2006, meeting and to accept and place them on file as prepared by the City Clerk. Passed - Vote 6-0

At this time, Council President Bernier announced that she will be taking Item Numbers 11 and 7 out of order and will be addressing them at this time. No Councilors objected.

UPDATE AND DISCUSSION REGARDING THE PROPOSED URBAN DESIGN OVERLAY DISTRICT AND GUIDELINES

City Planner David Hediger reviewed the map and proposed changes with the Council. Michael Grimmer, chairperson of the Downtown Advisory Board, suggested that the Council and Planning Board revisit the issue of the design standards and guidelines as a result of the recent fire on Lisbon Street, which he stated created a large hole in the streetscape of Lisbon Street. He noted that new structures and development need to flow well with the area color scheme and architecture in the area. Councilor Rousseau noted in addition to the loss of the buildings from the fire last month, the City has recently demolished seven buildings in the downtown area in the past few months, so there are several lots that could be redeveloped.

Larry Gilbert, 39 Cote Street, said he is a former member of DAB and he would support standards as opposed to guidelines. He noted the City should work with Auburn on this issue for uniform design standards for both downtowns. Councilor Mendros urged the Council not to

limit “tastefully unique” designs and not to stifle creativity while working for conformity. Deputy City Administrator Phil Nadeau said the staff will be assembling material for a proposal to be brought back before the Council and Planning Board.

**PUBLIC HEARING ON A NEW LIQUOR LICENSE APPLICATION FOR THE
CHICK-A-DEE OF LEWISTON, 1472 LISBON STREET**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the public hearing.

VOTE (2-2007)

Motion by Councilor Jean, seconded by Councilor Rousseau:

To authorize the City Clerk’s Office to approve a new liquor license application for the Chick-A-Dee of Lewiston, 1472 Lisbon Street. Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE REGARDING AN AMENDMENT
TO THE PERSONNEL CODE**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the public hearing.

VOTE (3-2007)

Motion by Councilor Jean, seconded by Councilor Rousseau:

That the proposed amendment to the City Code of Ordinances, Chapter 58 “Personnel”, Division 2. “Civil Service” receive final passage by a roll call vote. Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE FOR LAND USE CODE AMENDMENTS
REGARDING STORMWATER MANAGEMENT**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the public hearing.

VOTE (4-2007)

Motion by Councilor Jean, seconded by Councilor Rousseau:

That the proposed amendment to Appendix A, Article XI. “District Regulations”, Article XII. “Performance Standards” and Article XIII . “Development Review and Standards”, of the City Zoning and Land Use Code, concerning stormwater management, receive final passage by a roll call vote. Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE FOR LAND USE CODE AMENDMENTS
REGARDING SHORELAND ZONING**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the public hearing.

VOTE (5-2007)

Motion by Councilor O'Brien, seconded by Councilor Jean:

That the proposed amendment to Appendix A, Article XII. "Performance Standards", Section 2. "Shoreland Area Standards", of the City Zoning and Land Use Code, receive final passage by a roll call vote. Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE FOR REZONING OF THE PROPERTIES
AT 299 EAST AVENUE AND 3 DEMI CIRCLE**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the public hearing.

VOTE (6-2007)

Motion by Councilor Jean, seconded by Councilor Rousseau:

That the proposed amendment to re-zone the properties at 299 East Avenue and 3 Demi Circle from the Neighborhood Conservation "A" (NCA) District to the Community Business (CB) District, receive final passage by a roll call vote. Passed - Vote 6-0

**PUBLIC HEARING AND FINAL PASSAGE FOR THE CONDITIONAL REZONING OF
THE PROPERTIES AT 299 EAST AVENUE, 3 DEMI CIRCLE, 446 SABATTUS
STREET, 450 SABATTUS STREET AND A PORTION OF 456 SABATTUS STREET
FROM THE COMMUNITY BUSINESS (CB) DISTRICT TO THE URBAN
ENTERPRISE (UE) DISTRICT TO ACCOMMODATE FUTURE
COMMERCIAL/RETAIL DEVELOPMENT**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the public hearing.

VOTE (7-2007)

Motion by Councilor O'Brien, seconded by Councilor Jean:

To approve final passage of the amendment to the Zoning and Land Use Code and Map to conditionally rezone the properties at 299 East Avenue, 3 Demi Circle, 446 Sabattus Street, 450 Sabattus Street and a portion of 456 Sabattus Street from the Community Business (CB) District to the Urban Enterprise (UE) District, subject to a conditional agreement. Passed - Vote 6-0

**PUBLIC HEARING AND FIRST PASSAGE REGARDING AMENDMENTS
TO THE ELECTION ORDINANCE REGARDING CITIZEN INITIATIVE AND
REFERENDUM PROCESS**

Deputy City Administrator Phil Nadeau noted this item is to revise the petition process for citizens. He cited the recent stormwater utility petition effort which had the unintended consequence of creating a one million dollar gap in the current budget if enough signatures were collected. Mr. Nadeau said the amendments proposed this evening would exempt items that are related to budgetary matters and personnel matters from the petition process and the cities of Bangor, Augusta, Portland and Brunswick all have this language in their ordinances. He also noted the proposed changes would allow for the public circulation of signatures for formal petitions.

Councilor Mendros expressed concerns with the budgetary language, stating it is too broad and could be interpreted that almost any issue that is petitioned could be budget related. He used the example of the Bates Mill petition and said he feels it would not have been permitted if this language was in effect. Councilor O'Brien stated that the city has a very good public process and excellent public communication with citizens. She said this is an important item that should be approved.

Council President Bernier opened the public hearing. Charles Soule, 170 Bartlett Street, said he was very pleased to see the language allowing for the public circulation of signatures. Larry Poulin, 394 Sabattus Street, thanked the Council for creating this provision to allow petitions to be publically circulated for the collection of signatures. Council President Bernier then closed the public hearing.

Councilor Mendros made the following motion, noting it is not as restrictive as the original proposed amendment language.

VOTE (8-2007)

Motion by Councilor Mendros, seconded by Councilor Jean:

To insert the word "current" before the words "appropriations", "tax levy" and "budgetary matters" in the proposed amendment. Did Not Pass - Vote 3-3 (Councilors Mendros, Jean and Samson in favor; Councilors Bernier, O'Brien and Rousseau opposed)

VOTE (9-2007)

Motion by Councilor Jean, seconded by Councilor Rousseau:

That the proposed amendment to the City Code of Ordinances, Chapter 32 "Elections", Article II "Initiative and Referendum", Section 32-27, receive first passage by a roll call vote and that the public hearing on said ordinance be continued to the next regular meeting of the City Council for final passage. Did Not Pass - Vote 3-3 (Councilors Mendros, Jean and Samson in favor; Councilors Bernier, O'Brien and Rousseau opposed)

**SPECIAL AMUSEMENT PERMIT FOR THE FRATERNAL ORDER OF EAGLES,
1327 SABATTUS STREET**

Council President Bernier opened the public hearing. No members of the public spoke for or against this item. Council President Bernier then closed the public hearing.

VOTE (10-2007)

Motion by Councilor O'Brien, seconded by Councilor Jean:

To grant a special amusement permit for dancing and entertainment to the Fraternal Order of Eagles, 1327 Sabattus Street. Passed - Vote 6-0

**REQUEST FOR USE OF CITY SERVICES FOR THE DIGNITY MEMORIAL
VIETNAM WALL TRAVELING EXHIBIT DISPLAY**

Members of the Fortin Funeral Homes Group and the L/A Veterans Council were introduced as the organizers of this community effort to bring the traveling exhibit to Lewiston.

VOTE (11-2007)

Motion by Councilor Samson, seconded by Councilor O'Brien:

To approve the request for the use of city services for the Dignity Memorial Vietnam Wall traveling exhibit display:

1. Public Works to assist with wall area preparation.
2. The City will provide electricity for the event from existing sources (run appropriate extension cords from pump house)
3. Provide incoming motorcycle escort of wall transport
4. Public Works will provide snow fencing for crowd control at Veteran's Park
5. Minimal need for city staff on-site
6. Coordinate all public activities with Lewiston Police Department, Public Works Department, Recreation and Parks Department and Fire Department
7. Provide dumpster and waiver of tipping fees
8. Provide folding chairs and tables for hospitality/administration area

Passed - Vote 6-0

At this point, the Council took a five minute recess.

**DISCUSSION WITH CITY ATTORNEY REGARDING THE VACANCY IN THE
OFFICE OF MAYOR AND RELATED MATTERS**

City Attorney Martin Eisenstein was present at the meeting to discuss his legal opinion with the Council regarding the vacancy in the Office of Mayor. He noted the Council has two options - one is to do nothing and not to fill the position with an Interim Mayor and wait until the special

election, and second is to review Section 1.03 of the Charter which calls for the liberal interpretation of the Charter and note that the Council President, by Charter, shall lead the Council during the temporary absence of the Mayor, and therefore the Council President could be considered the Interim Mayor until the special election. He advocated for option two.

Councilor O'Brien said the Council must follow the Charter and they can not interpret it differently by law or intent. She noted the Charter indicates that the Council President is the leader of the Council. Councilor Mendros stated the Council decides for themselves how to proceed, with the advice of the City Attorney, but does not have to follow this advise. He noted the City Attorney does not tell the Council what to do, but the Council decides for itself how to proceed. He also said the Council created a problem with the timing of the nomination papers and the Charter provided the tools to avoid this problem and the Council put themselves into a bind. Councilor Mendros said that he agrees the Council President should be the presiding officer of the Council. Councilor O'Brien noted the Council selected the election dates to allow time for the circulation of nomination forms.

Councilor Rousseau inquired about the appointment authority of the newly created Downtown Neighborhood Task Force. The City Attorney stated that under the Charter, the Mayor solely makes appointments to ad hoc committees and therefore those appointments need to be done by the Mayor. The City Attorney also mentioned the clause in the Charter which states if the Mayor fails to make the appointments within 60 days after the openings, the Council can make the appointments. Councilor Mendros noted that the Planning Board and Zoning Board have alternate members, so if there are vacancies that occur, there should not be issues with quorums due to the alternate members. Councilor Rousseau said it is important to move forward with appointments to the Citizen Commission on Lewiston-Auburn Cooperation. The City Attorney noted that this commission was created under an Interlocal Agreement and it would be fine for the Council to make those appointments.

Council President Bernier then opened up the floor for citizen comment. Charles Soule of 170 Bartlett Street asked if appointments were made now, could the new Mayor ask those people to resign so the new Mayor could make his or her own appointments? Larry Gilbert of 39 Cote Street addressed the Council and stated this matter was settled at the last meeting by a vote of the Council which was a rejection of the Attorney's opinion. Mr. Gilbert said that no ambiguity exists in the Charter and the Charter does not provide power for the Council to vote to appoint the Council President as Interim Mayor. He noted the Charter creates a balance of power and the Council President was not elected by the people, but is simply the interim caretaker of the Council until the new Mayor is elected. Mr. Gilbert pointed out the power to create committees under the Charter rests with the Mayor who then makes the appointments. Mr. Gilbert then read several sections of the Charter and noted that the Council President, in the temporary absence of the Mayor, fulfills the duties of the Mayor with the exception of making appointments, noting the appointing power is reserved for the elected Mayor. He stated the Council would be violating the Charter if they voted and he suggested the Council seek a second legal opinion regarding this issue. He noted that he has received opinions on this matter from several other attorneys who disagree with the City Attorney's findings.

AUTHORIZATION TO APPLY FOR THE 2007 ALL AMERICA CITY AWARD

Allison Beaucage and Tim Stretton of the LYAC supported the idea of submitting an application for the 2007 award. They noted that 26 representatives went to Anaheim last year to compete for the award and they were told that the City came in one spot short of the top ten award winners. It was noted the judges stated after the fact that they were not aware the City's application was done by the LYAC and had the judges been clear on this point before the awards were presented, the place standings would have been different. Both noted it would be a great opportunity for the City to receive this award. The Deputy City Administrator noted that this time about half of the delegation would attend this time to reduce costs. He said the cost was approximately \$48,000 last year with \$17,000 received in private donations. Councilor Rousseau said he would work to raise the private funds for this year's trip.

Jonathan LaBonte of Auburn encouraged the Council to submit a joint application with Auburn this year. Larry Gilbert of 39 Cote Street applauded the efforts of last year's group and said it would be important for the community to work with Auburn and urged the Council to reapply again this year.

VOTE (12-2007)

Motion by Councilor Samson, seconded by Councilor Mendros:

To authorize city staff to prepare and submit an application for the 2007 All America City Award. Passed - Vote 6-0

REPORTS AND UPDATES

No reports or updates were presented at this time.

OTHER BUSINESS

Councilor Mendros reminded the Council of the discussion earlier regarding the proposed amendments to the Elections Ordinance to allow for the public circulation of petitions. He said that the Charter requires this to be done, but the Code does not allow it. He suggested the Council vote to uphold the Charter and allow for petitions to be circulated.

VOTE (13-2007)

Motion by Councilor Mendros, second by Councilor Jean:

To allow formal petitions to be circulated publically for the collection of signatures.

Did Not Pass - Vote 2-4 (Councilors Mendros and Jean in favor; Councilors Bernier, O'Brien, Samson and Rousseau opposed)

Steve Wheeler of 22 Hamel Street spoke and stated he feels it is an offense to his personal rights that he must come into City Hall to sign a petition during the hours of Monday - Friday, 8am - 4:30pm. He noted he, along with many residents, work 8am - 5pm and can not come into City

Hall during office hours. He said the Council does not support his rights to sign petitions. He noted that he was offended to not have access to the stormwater utility petition and the City should have held Saturday and Sunday hours to allow for citizens to come in and sign the petition.

VOTE (14-2007)

Motion by Councilor O'Brien, second by Councilor Samson:

To adjourn at 10:00 P.M. Passed - Vote 6-0

A true record, Attest:

Kathleen M. Montejo, CMC
City Clerk
Lewiston, Maine